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Environmental Impact Review Board : operating procedures

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*Environmental Impact Review Board*

# OPERATING PROCEDURES

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# ENVIRONMENTAL IMPACT REVIEW BOARD

## OPERATING PROCEDURES

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# ENVIRONMENTAL IMPACT REVIEW BOARD - Operating Procedures.

## 1. PURPOSE OF OPERATING PROCEDURES

The purpose of the Operating Procedures is to provide guidance to developers, government authorities and the public as to the process and rules of procedure which the Environmental Impact Review Board (the Board) follows when a development proposal is referred to it for public review. The Operating Procedures herein are not intended to be the Board's legal interpretation of the provisions of the Inuvialuit Final Agreement nor do they limit the powers of the Board to establish and adopt by-laws and rules for its internal management and its procedures [11(23)].

## 2. AUTHORITY OF THE BOARD: The Inuvialuit Final Agreement

The Environmental Impact Review Board was established under the terms of the Inuvialuit Final Agreement (IFA), negotiated between Canada and the Committee for Original Peoples Entitlement (COPE). The Inuvialuit Final Agreement was "approved, given effect and declared valid" by the Western Arctic (Inuvialuit) Claims Settlement Act [S.C. 32-33 Elizabeth II, C.24.28] in June, 1984.

In March, 1988, Inuvialuit responsibilities for implementation of the IFA were transferred from COPE to the Inuvialuit Regional Corporation (IRC), and COPE formally ceased to exist.

The Department of Indian Affairs and Northern Development (DIAND) is designated to implement the legislation on behalf of the Government of Canada.

The Board is given specific duties under Sections 8, 11, 12 and 13 of the IFA:

Section 8 deals with the setting of environmental standards in the Husky Lakes/Cape Bathurst Areas.

Section 11 describes the operations of the Environmental Impact Screening Committee and the Environmental Impact Review Board, collectively known as the Environmental Impact Screening and Review Process.

Section 12 is specific to the Yukon North Slope.

Section 13 provides for prevention of loss or damage to wildlife, wildlife habitat, and wildlife harvesting activities by development, and compensation to the Inuvialuit if damage does occur.

## 3. GOALS OF THE INUVIALUIT FINAL AGREEMENT

The Board operates within the scope of the Inuvialuit Final Agreement to achieve the basic goals expressed in Section 1:

To preserve the Inuvialuit cultural identity and values within a changing northern society.

To enable the Inuvialuit to be equal and meaningful participants in the northern and national economy and society.

To protect and preserve arctic wildlife, environment and biological productivity.

## 4. ROLE OF THE ENVIRONMENTAL IMPACT REVIEW BOARD

### (a) General:

The following points describe generally how the Board will operate.

The numbered references relate to the relevant sections of the Inuvialuit Final Agreement. For example, [11(8)] refers to Section 11, Sub-Section 8. (Sections 11 and 13 are duplicated and attached to these procedures as Appendices A and B. These appendices are included for easy reference, but it is important to note that the entire agreement governs the activities of the Board.)

If the Environmental Impact Screening Committee decides that a proposed development could have significant negative environmental impact, or that it could have a significant negative impact on present or future wildlife harvesting, the proposal shall be referred for further environmental impact review and assessment [11(16) and 13(7)].

If there has already been a pertinent government development or environmental impact review, or if there is one planned, the Screening Committee may decide to refer the proposal to that existing body [11(15)].

If this existing review body does not, or will not, adequately encompass the assessment and review function as described in the IFA, or if the review body declines to carry out such functions, the Screening Committee shall refer the development proposal to the Environmental Impact Review Board [11(16)].

The general term "environment" is considered by the Board to include the biological, physical, and human environments.

### (b) Referral:

The referral from the Environmental Impact Screening Committee shall contain the following:

1. Letter of referral:

   (a) Decision of Screening Committee.

   (b) Any concerns or reasons for the decision that the Screening Committee feels would be pertinent to further environmental impact review and assessment.

2. One copy of the project description that was screened, including any supplements provided by the proponent.

3. A copy of the Minutes of the Environmental Impact Screening Committee meeting at which the decision was made.

The Environmental Impact Screening Committee is responsible for informing the Proponent and the appropriate regulatory agencies of its decision, and of the fact that no permits or approvals shall be issued that would allow the proposal to proceed pending the outcome of the Public Review.

**(c) Public Review:**

When a development proposal is referred to the Board the proceedings of the Board shall be conducted as a Public Review [11(16)].

**(d) Review Panel:**

A Review Panel of four (4) Regular Members, plus the Chairman, will normally comprise the Board at the public review.

The Review Panel will be struck as soon as possible after the Proponent meets the information requirements of the Board.

**(e) Additional Members from Eligible Native Organizations:**

The Board will notify any native organizations eligible to participate under Section 11(8). The organization will normally be given 30 days to indicate whether or not they wish to designate a Review Panel Member.

**(f) Additional Members from Government of Canada:**

If one or more of the eligible native organizations appoints a Member to a Review Panel, Canada is then entitled to designate an equal number of Members in order to maintain the numerical balance [11(8)]. Canada will also be given 30 days to respond.

**(g) General Information Requirements:**

The Board will contact the Proponent as soon as possible after the referral, and will provide a copy of these Operating Procedures so that the Proponent will be able to prepare for the public review.

The Proponent will be expected to supply a written description of the Development Proposal and other pertinent documentation, including an Environmental Impact Statement, to each Member of the Review Panel and Staff.

At least 3 copies of each document must be provided to the Joint Secretariat Library in Inuvik for the use of the Public. The Board may require that additional copies of documents be provided to each technical or legal advisor to the Review Panel and to any other persons or places the Board may designate.

The first point of contact for the participants in any public review will be the Secretary of the Board, who may be contacted at the following address:

Secretary
Environmental Impact Review Board
P.O. Box 2120
Inuvik, Northwest Territories, Canada
X0E 0T0

telephone: (403) 979 - 2828
telecopier: (403) 979 - 2610

## 5. INFORMATION REQUIREMENTS FOR ENVIRONMENTAL IMPACT STATEMENT

### (a) Environmental Impact Statement (EIS):

The Board will define the requirements of the EIS specific to the development proposal, and forward these requirements to the Developer/Proponent.

The Proponent is encouraged to consult with the communities likely to be affected by the project, and the result of this consultation must be included in the EIS.

The Proponent must identify within the EIS the government regulatory agencies and other organizations involved in the regulation, monitoring, or management of the proposal.

The EIS is the basis for the public review. It should be made as complete as possible before it is provided to the Board, in order to limit the time required to address deficiencies.

Alternate methods for achieving the goals of the development proposal, alternate locations for facilities, and alternate time schedules for accomplishment of the activity must be laid out for consideration.

Reference should be made to any documentation necessary to support statements made in the EIS, or to assist in the evaluation of potential negative environmental impacts.

**(b) Receipt of Proponent's EIS:**

The timing of the submission of the Environmental Impact Statement depends on the scale of the development proposed, the complexity of the documentation needed to describe it and the potential environmental impacts, and on the number of potentially interested parties. Reception of the EIS determines when the next step in the process can be taken.

The Board and its technical Staff and/or Consultants will conduct an internal examination of the EIS documentation, once it is received, to determine if there are any obvious information deficiencies.

If the information provided is judged to be adequate for the purposes of a public review, the EIS will be accepted by the Board. The Board will then provide at least 30 days notice before holding a public meeting to review the Proposal.

**(c) Examination of EIS:**

In preparation for the public meeting, the Board will instruct the staff of the Board to hire technical advisors, to use government agencies or composite bodies (such as the Regional Environmental Review Committee or the Regional Ocean Dumping Advisory Committee), to assist them, where necessary, in their review of the material.

The review of the Proponent's EIS will be focussed on how environmental issues are dealt with, what mitigative and remedial measures are proposed, and how the requirements of the Inuvialuit Final Agreement will be met.

**(d) Written Questions:**

A written list of questions concerning the EIS may be returned to the Proponent.

Members of the Board will not engage in discussion or negotiation directly with the Proponent or Participants. The Staff supporting the Board will act as both a buffer and a communication link between the Board Members and the Proponent and Participants. All verbal communication between the Board and the Participants will be channelled through the Staff. All written communication will become part of the public record.

**(e) Information from Government Agencies:**

The Board may request Government Agencies to provide documents, data, and information concerning the Development Proposal to the Board. Members of Government Agencies may be requested by the Board to attend the review proceedings and to provide submissions to the Board, orally and in writing, and to be questioned by the Board and by the Proponent and Participants.

## 6. PUBLIC MEETINGS

**(a) Requirement of Public Meeting:**

The Board will convene a public meeting or meetings in the northern communities whose residents would be affected by the proposed development. The purpose of the meeting or meetings is to review the Development Proposal and determine whether:

(i) the Proposal is unacceptable and should be rejected; or

(ii) the Proposal should be approved subject to terms and conditions; or

(iii) a full public hearing should be held to review the Proposal.

**(b) Public Notice:**

The Board will notify the public concerning the time, place and purpose of the public meeting by advertising at least 30 days in advance in northern Canadian newspapers and sometimes in southern Canada.

**(c) Procedure at Public Meeting:**

The Proponent will first present the Development Proposal and submit to questioning by the Board. Government agencies will then be invited to make their presentations and submit to questioning by the Board. Members of the public will then be given the opportunity to present their submissions and to answer questions. When appropriate, any Participants may submit questions, with leave of the Chairman, to the Proponent, government representatives or members of the public. The Chairman may vary this order of presentation. The Chairman may also limit the time for making presentations.

**(d) Submissions:**

Submitters are requested to provide 10 copies of their submissions at least 10 days in advance and, if more than one meeting is scheduled, to indicate at which meeting they intend to make their submission and in which official language or Inuvialuktun dialect. The Chairman may refuse to accept a submission that is not relevant to the questions being considered at the meeting.

## 7. PUBLIC HEARINGS

### (a) Procedures for Public Hearings

If the Board decides after the public meeting that the Development Proposal should be subjected to a full public hearing the following procedures shall apply:

### (b) Public Notice

The Board shall give at least 30 days notice of the intent to convene the public hearing.

### (c) Intention to Intervene

Organizations, government agencies and individuals intending to participate in the hearing shall give written notice of their intentions to intervene to the Secretary of the Board within two weeks after the date of publication of the Notice of Hearings, stating their interest in the proceedings, the issues they intend to deal with, and the official language or Inuvialuktun dialect they intend to use. The Secretary of the Board will maintain a list of Registered Intervenors and provide copies to all participants. Intervenors will be expected to provide copies of their interventions to all of those named on the list.

### (d) Rights of Intervenor

An Intervenor is granted the privilege of making submissions to the Board in the form of written and oral evidence and argument, and of questioning the Proponent and other Intervenors. It is expected that Intervenors will attend the hearings in person through all of the proceedings or, at least, all the phases of the hearings in which they are interested.

**(e) Pre-Hearing Conference**

The Board may require the holding of a Pre-Hearing Conference. The purpose of the Pre-Hearing Conference is to discuss procedural matters only. All Participants in the public hearing will be invited to attend this Conference.

The Board will be represented by the Staff and the Chairman. The other Review Members will not participate.

This Conference will not address any issues of substance nor will it provide a forum for debate of any concerns that the Participants may have with respect to the content of the Proposal.

**(f) Hearing Order**

A Hearing Order, dealing with some or all of the following matters, will be made public by the Board:

(1) Dates and Locations of Hearing Sessions.

(2) Schedule for exchanging written evidence.

(3) Schedule of answering questions.

(4) Any specific rulings respecting procedures for the hearing.

(5) Order of appearances, rules, format and protocol for participation.

(6) Identification of issues to be addressed in the public hearing and scheduling the order in which they will be addressed.

**(g) Written Evidence**

The Board may require the Proponent and Participants in a public hearing to prepare their evidence or argument in writing, and to exchange this evidence or argument with other Participants, as well as provide copies to the Board. The schedule for exchanges will be set by the Board.

**(h) Written Questions**

The Review Board may require the Proponent and Participants to answer in writing the written questions addressed to them by other Participants, according to a schedule set by the Board.

## 8. DECISIONS OF REVIEW BOARD

**(a) Recommendations:**

Once the Public Review has been conducted, the Board will expeditiously render a Final Decision [11(24)].

The recommendation(s) of the Board shall be transmitted to the governmental authorities competent to authorize the development [11(27)]. The Board shall recommend whether or not the development should proceed.

If the Board decides that the development may proceed, it shall make recommendations as to Terms and Conditions that should apply to the development, including mitigative and remedial measures [11(24) and 13(11)]. It will detail the assumptions used in considering the environmental impact of the development.

If provision for compensation for loss or damage to wildlife, habitat, or wildlife harvesting activities is deemed necessary, the Board will also suggest suitable Limits of Liability [13(11)].

The Board may recommend that further environmental impact assessment and review be done before the Proponent proceeds with the development [11(24)].

**(b) Acceptance of Recommendations:**

If the competent governmental authorities are unwilling or unable to accept the recommendations of the Board, or wishes to modify any of them, reasons shall be provided, in writing, within 30 days [11(29)]. The reasons for not accepting the recommendations shall be transmitted to all interested parties and will be made public [11(30)].

No licence or approval shall be issued that would have the effect of permitting any proposed development to proceed unless the provisions of the Environmental Impact Screening and Review Process [11(31)] have been complied with.

**(c) Governmental Review:**

The Government of Canada may hold other impact assessments and reviews under the laws and policies of Canada [11(32)].

## 9. OTHER MATTERS OF PROCEDURE

**(a) Rules of Procedure and Evidence:**

The Board will establish, from time to time, its rules of procedure for public meetings and public hearings.

The Board will not be bound by the technical legal rules of evidence. Most hearings and meetings will be conducted in a non-legalistic manner, but will always be guided by the terms of the Inuvialuit Final Agreement.

The Chairman of the Board, after consultation with sitting Board Members, will rule on procedural matters arising during the course of a public meeting or a public hearing.

**(b) Proceedings and Records**

All transcripts and records of the proceedings, plus copies of any information or communication received from the participants, will be retained by the Secretary of the Board [11(26)] and made available for public inspection during normal office hours.

Upon completion of the hearing(s) or meeting(s), the record of the proceedings, including the Board's recommendations to the governmental authority, will be placed on file in the library of the Joint Secretariat in Inuvik. These materials will be available for public inspection during normal office hours.

**(c) Participant Funding**

There is no money available from the Environmental Impact Review Board to finance the participation of Intervenors.

In some cases, where the issues are complex and the environmental effects could be serious, the Board may recommend to the appropriate government agency that financial assistance be given to Intervenors in order for them to effectively participate in the public review.

## 10. PUBLIC MEETING FORMAT

Public meetings will normally be conducted by the Board in accordance with the following format:

1. Opening Remarks by the Chairman:

   Purpose of the public meeting

   Mandate of the Board

   Introduction of the Board and Staff

   Introduction of the Proponent and Staff

   List of written submissions filed with the Board

   Introduction of submitters present

   Introduction of representatives of Government Agencies

   Presentation of agenda

2. Procedural Matters:

   Any challenge or objection to the proceedings will now be dealt with.

   Suggestions for changes in the format of the public meeting will now be considered, at the discretion of Chairman.

3. Presentations:

   The Proponent will present the development proposal as submitted to the Board.

The Proponent will then be questioned by the submitters, the Review Staff, the individual Members, and then the general public.

All questions will be directed to the Chairman, who may rule on the relevance of each question if necessary.

4. Rebuttal:

The Proponent will be allowed an opportunity to answer questions or to address new issues raised by the Submitters or the general public.

The Proponent who takes advantage of this opportunity for rebuttal is thereafter required to answer questions posed by any participant in the meeting, provided the Chairman finds the question pertinent.

5. Closing Remarks:

The Chairman will thank the participants, and declare the proceedings closed.

6. Decision:

After the closing of the proceedings, the Board will make a decision with recommendations, and forward it to the government authorities empowered to approve the proposal development [13(11)].

## 11. PUBLIC HEARING FORMAT

Public hearings will normally be conducted by the Board in accordance with the following format. The Board Chairman may elect to modify or enlarge the proceedings should the circumstances warrant. Changes to this format will normally be enacted only after consultation with the participants, and before commencement of the proceedings.

ENVIRONMENTAL IMPACT REVIEW BOARD - Operating Procedures.

1. Chairman's Opening Address:

Introduction of Participants.

Terms of Reference of the Board.

Synopsis of topic being heard (the Development Proposal).

Procedural Format:

- Legal challenges to the hearing procedure or format.
- Ground Rules.
- Schedule.

2. Proponent's Opening Remarks:

General intentions of Developer/Proponent.

3. Intervenors' Opening Remarks:

General intentions of each registered Intervenor.

4. Presentations:

Proponent presents Development Proposal.

Proponent questioned by the Board's Staff/Consultants.

Proponent questioned by the Intervenors.

Proponent questioned by the Board Members.

Intervenors present interventions.

Intervenors questioned by the Proponent.

Intervenors questioned by the Board's Staff/Consultants.

Intervenors questioned by the Board Members.

**General Public.**

The general public will have an opportunity to make brief comments or to ask questions of the Participants.

All questions or comments will be addressed to the Chairman, who may rule on the relevance of the point raised.

5. Rebuttal:

The Proponent may submit material in rebuttal to points or questions raised during the presentations of other participants.

6. Closing Statements:

The Board may permit the Participants to make oral or written closing statements.

7. Official Closure of the Hearing:

The public hearing may be declared closed at any time at the discretion of the Chairman.

8. Decision:

After the closing of the proceedings, the Board will make a decision with recommendations, and forward it to the government authorities empowered to approve the proposal development [13(11)].

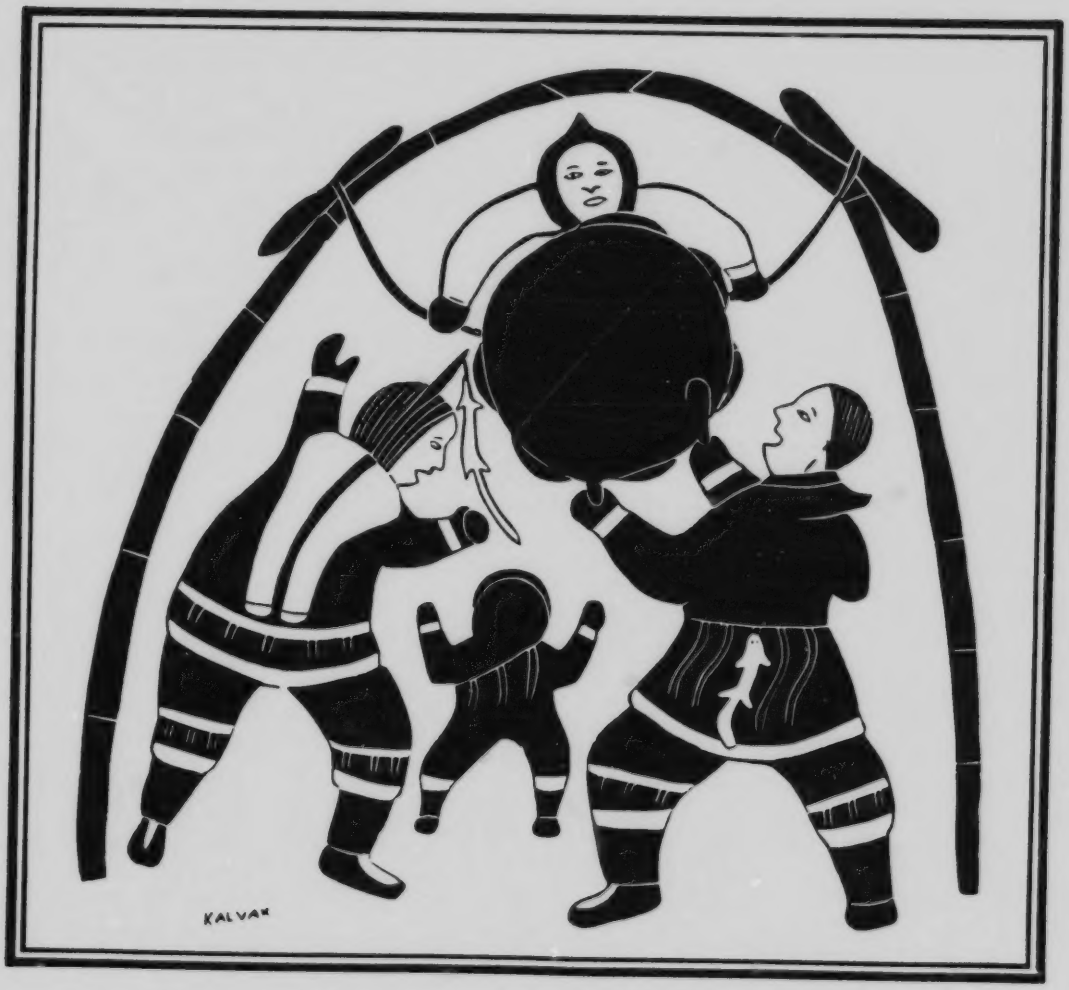
APPENDIX A. SECTION 11 OF THE INUVIALUIT FINAL AGREEMENT

B. SECTION 13 OF THE INUVIALUIT FINAL AGREEMENT

Indian and Northern Affairs Canada
Affaires indiennes et du Nord Canada

# THE WESTERN ARCTIC CLAIM

## THE INUVIALUIT FINAL AGREEMENT




Canada

APPENDIX A. SECTION 11

## ENVIRONMENTAL IMPACT SCREENING AND REVIEW PROCESS

11. (1) The developments subject to environmental impact screening include:

(a) developments described in subsection 13(7);

(b) developments in the Yukon North Slope region described in section 12;

(c) developments in the Inuvialuit Settlement Region in respect of which the Inuvialuit request environmental impact screening; and

(d) subject to any agreement between the Inuvialuit and the Dene/Metis, developments in areas including the Aklavik land selections where the traditional harvest of the Dene/Metis may be adversely affected, on request by the Dene/Metis or by the Inuvialuit.

11. (2) Each development subject to screening shall be dealt with in accordance with the procedures, principles, criteria and provisions applicable under this Agreement. Except for screening and review for the purposes of wildlife compensation, the process described in this section applies only to onshore development. There shall be a similar process in the Yukon Territory in the area south of the watershed and north of the Porcupine and Bell Rivers, in which native and government representation shall be equal.

11. (3) There is hereby established the Environmental Impact Screening Committee, to be made up of seven (7) permanent members. Canada and the Inuvialuit shall each appoint three (3) permanent members. Of the three permanent members appointed by Canada, each of the Governments of the Northwest Territories and the Yukon Territory shall designate one. Additional members may be designated from time to time pursuant to subsection (8).

11. (4) A Chairman shall be appointed by Canada, with the consent of the Inuvialuit. Where the parties cannot agree on a Chairman, the Chief Justice of either of the Territories may appoint a Chairman at the request of one of the parties.

11. (5) The permanent members shall be appointed, remunerated and replaced by the respective appointing parties. The term of office of all permanent members, including the Chairman, shall be three years and they are eligible to be re-appointed on the expiration of the term.

11. (6) Each screening shall be carried out by a panel of five (5) of the permanent members, two (2) appointees of Canada, two (2) appointees of the Inuvialuit, and the Chairman, plus, if applicable, additional members designated pursuant to subsection (8). Of the two permanent members appointed by Canada, one shall be designated by the Territorial Government in whose jurisdiction the development being screened is to be located. The representation of Government of the Yukon Territory for matters north of the watershed and of the Government of the Northwest Territories for matters in the Western Arctic Region shall increase as their respective jurisdictions increase and shall form a majority of the appointees of Canada for matters exclusively within their respective jurisdictions.

11. (7) Where any of the parties fails to nominate a sufficient number of persons within a reasonable time, the Committee may discharge its responsibilities with such members as have been appointed.

11. (8) Where an organization recognized for an adjacent comprehensive land claims settlement considers that a development being screened is capable of having a negative environmental impact to the detriment of native persons using or occupying the Inuvialuit Settlement Region and the organization represents those native persons, it shall have the right, at its expense, to designate for the screening panel one (1) additional member, or more than one if so agreed by way of agreement between the Inuvialuit and the duly authorized organization representing the native group in question. Canada shall have the right to designate additional members sufficient to attain representation on the panel equivalent to that of the natives.

11. (9) As adjacent land claims are settled, the representation on panels available to other native organizations by virtue of subsection (8) shall cease unless like representation is available to the Inuvialuit on like panels dealing with adjacent land areas used or occupied by the Inuvialuit.

11. (10) All members of the Screening Committee shall have one vote except the Chairman who shall vote only in the case of a deadlock.

11. (11) The Screening Committee may establish and adopt by-laws and rules for its internal management and procedures in order to ensure reasonable and expeditious consideration of applications.

11. (12) The proponents of a development required to be screened shall submit a project description to the Screening Committee during the preliminary planning stage containing the following information:

(*a*) the purpose of the project;

(*b*) the nature and extent of the proposed development;

(*c*) the rationale for the site selection; and

(*d*) information and technical data in sufficient detail to permit an adequate preliminary assessment of the project and its environmental impact.

11. (13) On receipt of a project description, the Screening Committee shall expeditiously determine if the proposed development could have a significant negative environmental impact and shall indicate in writing to the governmental authority competent to authorize the development that, in its view:

(*a*) the development will have no such significant negative impact and may proceed without environmental impact assessment and review under this Agreement;

(*b*) the development could have significant negative impact and is subject to assessment and review under this Agreement; or

(*c*) the development proposal has deficiencies of a nature that warrant a termination of its consideration and the submission of another project description.

11. (14) For the purposes of paragraph 13(*a*), the Screening Committee shall take into account any prior governmental development or environmental impact review process that, in its opinion, adequately encompassed the assessment and review function.

11. (15) Where a proposed development is or may be subject to a governmental development or environmental impact review process, and in the opinion of the Screening Committee that review process adequately encompasses or will encompass the assessment and review function, the Screening Committee shall refer the proposal to the body carrying out that review process.

11. (16) If, in the opinion of the Screening Committee, the review process referred to in subsection (14) does not or will not adequately encompass the assessment and review function, or if the review body declines to carry out such functions, the proposal shall be referred to the Review Board for a public review.

11. (17) Decisions of the Screening Committee shall be made by majority vote of the panel appointed, shall be in writing and shall be signed by all panel members.

11. (18) The Environmental Impact Review Board is hereby established to be the review body for any development referred to it pursuant to this Agreement. The Review Board shall have seven (7) permanent members, three (3) appointed by Canada, three (3) appointed by the Inuvialuit and a Chairman appointed by Canada, with the consent of the Inuvialuit. Of the three (3) members appointed by Canada, one shall be designated by the Territorial Government in whose jurisdiction the development being reviewed is to be located. The representation of the Government of the Yukon Territory for matters north of the watershed and of the Government of the Northwest Territories for matters in the Western Arctic Region shall increase as their respective jurisdictions increase and shall form a majority of appointees for matters exclusively within their respective jurisdictions. The membership of the Review Board may be increased or decreased from time to time at the discretion of Canada, but the same proportion of representation for Canada and the Inuvialuit shall be maintained.

11. (19) The Review Board shall deal with each development subject to environmental assessment and review in accordance with the applicable provisions of this Agreement. For greater certainty, subsections (6) to (9) apply to the constitution of the Review Board panels, with such modifications as the circumstances require.

11. (20) The permanent members of the Review Board shall be appointed, remunerated and replaced by the respective appointing parties. The term of office of all permanent members, including the Chairman, shall be three (3) years and they are eligible to be re-appointed on the expiration of the term.

11. (21) Where any of the parties fails to nominate a sufficient number of persons within a reasonable time, the Review Board may discharge its responsibilities with such members as have been appointed.

11. (22) A person may be a member of both the Screening Committee and the Review Board.

11. (23) Canada shall provide to the Review Board the staff required to enable it to fulfil its functions. The Review Board may establish and adopt by-laws and rules for its internal management and its procedures.

11. (24) The Review Board shall expeditiously review all projects referred to it and on the basis of the evidence and information before it shall recommend whether or not the development should proceed and, if it should, on what terms and conditions, including mitigative and remedial measures. The Review Board may also recommend that the development should be subject to further

assessment and review and, if so, the data or information required.

11. (25) Decisions of the Review Board shall be made by majority vote of the panel appointed, shall be in writing and shall be signed by all panel members.

11. (26) A register shall be kept of all decisions of the Review Board. The data used by the Review Board shall be retained and made available to the public on request.

11. (27) The decision containing the recommendations of the Review Board shall be transmitted to the governmental authority competent to authorize the development. That authority, consistent with the provisions of this section and after considering, among other factors, the recommendations of the Review Board, shall decide whether or not, on the basis of environmental impact considerations, the development should proceed and, if so, on what terms and conditions, including mitigative and remedial measures.

11. (28) If, pursuant to subsection (27), the competent governmental authority decides that further impact assessment and review is required, the proposed development shall be subject to further impact assessment and review based on the same or different information, requirements or specifications as the governmental authority considers appropriate.

11. (29) If the competent governmental authority is unwilling or unable to accept any recommendations of the Review Board or wishes to modify any such recommendations, it shall give reasons in writing within thirty (30) days, stating why it has not accepted the recommendations.

11. (30) The decision of the competent governmental authority shall be transmitted to the interested parties and made public.

11. (31) No licence or approval shall be issued that would have the effect of permitting any proposed development to proceed unless the provisions of this section have been complied with.

11. (32) For greater certainty, nothing in this section restricts the power or obligation of the Government to carry out environmental impact assessment and review under the laws and policies of Canada.

# APPENDIX B. SECTION 13

## WILDLIFE COMPENSATION

13. (1) The objectives of this section are:

(*a*) to prevent damage to wildlife and its habitat and to avoid disruption of Inuvialuit harvesting activities by reason of development; and

(*b*) if damage occurs, to restore wildlife and its habitat as far as is practicable to its original state and to compensate Inuvialuit hunters, trappers and fishermen for the loss of their subsistence or commercial harvesting opportunities.

### Definitions and General Principles

13. (2) In this section,

"actual wildlife harvest loss" means provable loss or diminution of wildlife harvesting, or damage to property used in harvesting wildlife, or both;

"future harvest loss" means provable damage to habitat or disruption of harvestable wildlife having a foreseeable negative impact on future wildlife harvesting.

13. (3) Subject to this section, the Inuvialuit shall be compensated for actual wildlife harvest loss resulting from development in the Inuvialuit Settlement Region.

13. (4) Subject to this section, the Inuvialuit shall benefit from environmental protection measures designed to reduce future harvest loss resulting from development in the Inuvialuit Settlement Region.

13. (5) The provisions of this section do not apply to development activities on lands owned by the Inuvialuit under paragraph 7(1)(*a*) except developments proposed for lands presently the subject of outstanding leases or other existing rights.

13. (6) Where, in accordance with section 10, Participation Agreements are entered into that by voluntary agreement establish mitigative and remedial obligations for developers, subsection (16) does not apply.

### Wildlife Impact Assessment

13. (7) Every proposed development of consequence to the Inuvialuit Settlement Region that is likely to cause a negative environmental impact shall be screened by the Screening Committee to determine whether the develop-

ment could have a significant negative impact on present or future wildlife harvesting.

13. (8) If the Screening Committee determines that a proposed development could have a significant negative impact on present or future wildlife harvesting, it shall refer the proposal for an environmental impact assessment and review in the manner provided by subsections (9) and (10).

13. (9) Where a proposed development is subject to environmental impact review that, in the opinion of the Screening Committee, adequately encompasses or will encompass the assessment and review function and includes or will include in its evaluation adequate terms and conditions of development and limits of liability, the Screening Committee shall refer the proposal to the body carrying out the environmental impact review.

13. (10) If, in the opinion of the Screening Committee, the review body does not or will not adequately incorporate within its review each element of the process set out in subsection (9), or if the review body declines to do so, the proposal shall be referred to the Review Board.

13. (11) Where, pursuant to subsection (10), a proposal is referred to the Review Board, it shall, on the basis of the evidence and information before it, recommend to the government authority empowered to approve the proposed development:

(*a*) terms and conditions relating to the mitigative and remedial measures that it considers necessary to minimize any negative impact on wildlife harvesting; and

(*b*) an estimate of the potential liability of the developer, determined on a worst case scenario, taking into consideration the balance between economic factors, including the ability of the developer to pay, and environmental factors.

13. (12) The Government agrees that every proposed development of consequence to the Inuvialuit Settlement Region that is within its jurisdiction and that could have a significant negative impact on wildlife habitat or on present or future wildlife harvesting will be authorized only after due scrutiny of and attention to all environmental concerns and subject to reasonable mitigative and remedial provisions being imposed.

### Financial Responsibility

13. (13) Every developer, other than a government but including a Crown corporation, shall be required to prove financial responsibility before being authorized to undertake any development in the Inuvialuit Settlement Region.

13. (14) The government authority empowered to permit the development and set the terms and conditions thereof may require a developer to provide for and ensure financial responsibility with respect to the obligations and undertakings provided in this section in the form of a letter of credit, guarantee or indemnity bond or any other form satisfactory to the government authority.

### Liability for Damage

13. (15) Where it is established that actual wildlife harvest loss or future harvest loss was caused by development, the liability of the developer shall be absolute and he shall be liable without proof of fault or negligence for compensation to the Inuvialuit and for the cost of mitigative and remedial measures as follows:

(*a*) where the loss was caused by one developer, that developer shall be liable;

(*b*) where the loss was caused by more than one developer, those developers shall be jointly and severally liable; and

(*c*) where the loss was caused by development generally, but is not attributable to any specific developer, the developers whose activities were of such nature and extent that they could reasonably be implicated in the loss shall be jointly and severally liable.

13. (16) Subject to subsections (5) and (6), if any developer who has caused actual wildlife harvest loss or future harvest loss is unable or fails to meet his responsibilities therefor, Canada acknowledges that, where it was involved in establishing terms and conditions for the development, it has a responsibility to assume the developer's liability for mitigative and remedial measures to the extent practicable.

13. (17) No recourse pursuant to subsection (18) may be taken against a developer unless a claim is made under subsection (19) within three years from the time when the loss in respect of which the recourse is exercised occurred or first occurred, as the case may be, or could reasonably be expected to have become known to those affected thereby.

### Recourses of the Inuvialuit

13. (18) Where actual wildlife harvest loss or future harvest loss results from development, the Inuvialuit may exercise the following recourses:

(*a*) respecting actual wildlife harvest loss, Inuvialuit hunters, trappers and fishermen who depend on hunting, trapping or fishing for a material part of their gross income have the right to obtain compensation for damage to or loss of harvesting equipment and for loss or reduction of hunting, trapping or fishing income. Inuvialuit claimants may act individually or collectively or through duly authorized representatives, subject to the right of the other parties to verify the representative quality or capacity of the group or representative and the validity of the claims. The types of compensation that may be claimed include the cost of temporary or permanent relocation, replacement of equipment, reimbursement in kind subject to harvestable quotas, provision of such wildlife products

as may be obtainable under existing Acts and regulations, payment in lump sum or by instalments or any reasonable combination thereof. The claimant shall be entitled to indicate his preference as to type of compensation in making his claim, but the compensation award shall be subject to subsections (22) and (23);

(*b*) respecting actual wildlife harvest loss. Inuvialuit who harvest renewable resources for subsistence purposes have the right to obtain compensation for damage to or loss of harvesting equipment and for any material reduction in wildlife take or harvest. Inuvialuit claimants may act individually or collectively or through duly authorized representatives, subject to the right of the other parties to verify the representative quality or capacity of the group or representative and the validity of the claims. For greater certainty, the subsistence harvester may claim compensation measured by reference to his prior total take or harvest, notwithstanding that some part or all of it may have been directed to or used by others. The types of compensation that may be claimed include the cost of temporary or permanent relocation, replacement of equipment, reimbursement in kind subject to harvestable quotas, provision of such wildlife products as may be obtainable under existing Acts and regulations or, as a last resort, cash payment in lump sum or by instalments or any reasonable combination thereof. The claimant shall be entitled to indicate his preference as to type of compensation in making his claim, but the compensation award shall be subject to subsections (22) and (23); and

(*c*) respecting future harvest loss, any definable Inuvialuit group or community affected, including consumers of renewable resource products, collectively or through duly authorized representatives, subject to the right of the other parties to verify the representative quality or capacity of the group or representative and the validity of the claims, have the right to seek recommendations of the Arbitration Board pursuant to section 18 with respect to remedial measures, to the extent reasonably practicable, including cleanup, habitat restoration and reclamation. Such recourse shall be governed by subsection (24). The obligation of a developer for the taking of mitigative and remedial measures is subject to any limits established by the authority empowered to approve the proposed development.

### Procedure for Claims, Mediation and Arbitration

13. (19) Every claim for actual wildlife harvest loss or future harvest loss alleged to have resulted from development shall be made in writing by the appropriate Inuvialuit claimant by means of a notice given by the claimant to the developer.

13. (20) During the sixty (60) day period following the giving of the notice referred to in subsection (19), the claimant and developer shall attempt to settle the claim and, for that purpose may, by mutual consent, appoint a mediator. If the claim is not settled within that period, the claimant may forward his allegations in writing to the Arbitration Board for hearing and decision in accordance with section 18.

13. (21) In order to succeed before the Arbitration Board, the claimant must prove, on a balance of probabilities:

(*a*) actual wildlife harvest loss or future harvest loss or both; and

(*b*) that the actual wildlife harvest loss or future harvest loss or both results from development.

13. (22) Where recourse is claimed pursuant to paragraph (18)(*a*) or (*b*), the onus is on the claimant to prove the loss on a balance of probabilities. The Arbitration Board shall take into account the priorities expressed by the claimant as to the nature of the compensation desired, but if it rules in favour of the claimant it must select the most reasonable type of compensation given the nature and extent of the loss.

13. (23) In making an award on a claim pursuant to paragraph (18)(*a*) or (*b*), the Arbitration Board shall estimate the duration of the impact of the development on wildlife harvesting and determine compensation accordingly. Saving in exceptional circumstances, the award for compensation should not be made with the intention of providing a guaranteed income in perpetuity and compensation should be on the basis of a diminishing scale for a limited time. The claimant shall, as far as reasonable in the circumstances, mitigate his damages and should subsequent events, including the effect of any mitigative or remedial measures, materially affect the claim, any party to the original proceedings may cause the hearing to be reopened in order that the decision may be rescinded or appropriately varied.

13. (24) Where recourse is claimed pursuant to paragraph (18)(c) and a governmental authority has jurisdiction to enforce mitigative and remedial measures, the Arbitration Board, having regard to the terms and conditions established by the authority empowered to authorize the development, shall recommend to that authority appropriate remedial measures if it is satisfied that the claimant has proven, on a balance of probabilities, future harvest loss resulting from development. Where the government authority does not comply with those recommendations, it shall give the reasons therefor in writing within sixty (60) days after the making of the recommendations.

### Legal Rights and Recourses

13. (25) The wildlife compensation provisions and procedures in this section are without prejudice to the legal rights and recourses of the parties, but where the provisions of subsections (19) to (23) are applied, the decision of the Arbitration Board is final and binding on the parties to the arbitration, subject only to the review provisions of this Agreement.